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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/670,121	09/26/2000	Alain Bouilloux	33831F131	4873

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EXAMINER

WOODWARD, ANA LUCRECIA

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 05/08/2002

9

Please find below and/or attached an Office communication concerning this application or proceeding.

T-D-9

Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE Three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 9/26/00, 3/7/02
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-14 is/are pending in the application.
- ☐ Of the above claim(s) 6-11 and 14 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-5, 12 and 13 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 4
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I comprising the polyamide and ethylene/2-ethylhexyl acrylate/maleic anhydride terpolymer species of example 3 in Paper No. 8 is acknowledged. The traversal is on the ground(s) that the additional search for Groups II and III would not be substantially burdensome because the subject matter is inextricably intertwined. This is not found persuasive because contrary to applicants' contention, the search fields for Groups II and III are not the same as Group I, i.e., they are not co-extensive. Thus, the additional searches for the non-elected groups would most certainly be unduly burdensome. Furthermore, it is noted that applicants have not submitted evidence or identified such evidence now of record showing the species to be obvious variants or clearly admitted on the record that this is the case.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 6-11 and 14 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected group or species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 8.

Claim Rejections - 35 USC § 112

3. Claims 1-5, 12 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the markush group format with respect to component (M) is improper.

Art Unit: 1711

In claim 1, the metes and bounds of the "functional group" are unclear. As presently recited, said group reads on the ester group of the acrylate comonomer of component (B1). Thus, component (B1) embraces copolymers which only contain the recited ethylene and (meth)acrylate comonomers.

In claim 1, the characterization of component (B2) as a copolymer which "does not carry a functional group" is indefinite given that said copolymer does contain an ester functional group.

In claim 1, the metes and bounds of the impact modifier with functional group is indeterminate in scope. As presently recited, said component reads on either of the two antecedently recited ethylene copolymers.

In claim 2, the markush group format is improper.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-5, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 4,554,320 (Reimann et al)

Reimann et al disclose nylon compositions having high impact strength containing a copolymer of ethylene, a primary or secondary alkyl acrylate having from 2

Art Unit: 1711

to 8 carbons and a monomer possessing a latent acid functional group. The preferred alkyl acrylate is n-butylacrylate.

In essence, the disclosure of the reference differs from the present claims in not expressly exemplifying an alkyl acrylate having at least 5 carbon atoms. It is maintained, however, that the use of alkyl acrylates meeting the requirements of the present claims are clearly within the general disclosure of the reference and, as such, would have been obvious to one having ordinary skill in the art. That is, based on the teachings of the reference, it would have been obvious to one having ordinary skill in the art to have used a copolymer based on an alkyl acrylate having from 5 to 8 carbon atoms with the reasonable expectation of success.

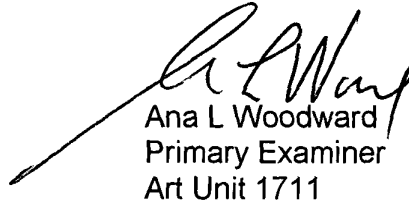
If Applicants can show via affidavit or declaration that unusual or unexpected results are achieved by using an alkyl acrylate having 5 carbon atoms as opposed to one having 4 carbon atoms in an otherwise identical copolymer, then a more favorable consideration would be given to claims commensurate in scope with the showing. The evidence presently of record in applicants' examples has been reviewed but is deemed insufficient in establishing unexpected results because such does not establish criticality of the presently claimed alkyl acrylate having 5 carbon atoms with the closest embodiment of the prior art, that is, the n-butylacrylate.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ana L Woodward whose telephone number is (703) 308-2401. The examiner can normally be reached on Monday-Friday (8:30-5:00).

Art Unit: 1711

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on (703) 308-2462. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Ana L Woodward
Primary Examiner
Art Unit 1711